To: KTM-Sportmotorcycle AG (dotto@rennerotto.com)

Subject: U.S. TRADEMARK APPLICATION NO. 79147426 - E SPEED - N/A

Sent: 3/30/2016 4:52:29 PM

Sent As: ECOM121@USPTO.GOV

Attachments: <u>Attachment - 1</u>

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UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO) OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

U.S. APPLICATION SERIAL NO. 79147426

MARK: E SPEED *79147426*

CORRESPONDENT ADDRESS:

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APPLICANT: KTM-Sportmotorcycle AG

CORRESPONDENT'S REFERENCE/DOCKET

NO: N/A

CORRESPONDENT E-MAIL ADDRESS:

dotto@rennerotto.com

OFFICE ACTION

ISSUE/MAILING DATE: 3/30/2016

THIS IS A FINAL REFUSAL.

INTERNATIONAL REGISTRATION NO. 1204325

INTRODUCTION

On March 16, 2016, the Trademark Trial and Appeal Board suspended applicant's appeal and remanded the application to the trademark examining attorney to review applicant's request for reconsideration. This request for reconsideration presents new evidence, consisting of a Consent Agreement between the applicant and the registrant, dated February 2, 2016 (hereinafter "Consent Agreement" or "Agreement"), where the parties agree to applicant's use of the E SPEED mark for the goods addressed in the December 15, 2014 Office action. *See* TBMP §§1207.02, 1209.04. While this consent agreement is new evidence, it does not raise a separate issue. *See* TMEP §714.05(d).

For the reasons set forth below, the trademark examining attorney maintains and makes FINAL the refusal. See 37 C.F.R. §2.63(b); TMEP §714.04, 714.05(d).

SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer

would be confused or mistaken or deceived as to the source of the goods of the applicant and registrant. *See* 15 U.S.C. §1052(d). The court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). *See* TMEP §1207.01. However, not all of the factors are necessarily relevant or of equal weight, and any one factor may be dominant in a given case, depending upon the evidence of record. *See In re E. I. du Pont*, 177 USPQ at 567.

The existence of a consent agreement relates to one of the *du Pont* factors, namely the market interface between Applicant and Registrant. *In re Bay State Brewing Company, Inc.*, Serial No. 85826258 (February 25, 2016) [precedential]. Although consent agreements are entitled to great weight, it is "but one factor to be taken into account with all of the other relevant circumstances bearing on the likelihood of confusion referred to in §2(d)." *In re N.A.D. Inc.*, 754 F.2d 996, 224 USPQ 969, 971 (Fed. Cir. 1985); TMEP §1207.01(d)(viii)

In this case, the Agreement is a naked consent that does not tip the scale in favor of registrability because the other relevant factors clearly dictate a finding of a likelihood of confusion. See In re Four Seasons Hotels Ltd., 987 F.2d 1565, 26 USPQ2d 1071 (Fed. Cir. 1993); cf. In re Mastic Inc., 829 F.2d 1114, 4 USPQ2d 1292 (Fed. Cir. 1987) (affirming TTAB's holding that applicant's mark was barred by §2(d), because the provided consent to register was essentially a "naked" consent and all other relevant factors weighed in favor of a conclusion that confusion was likely). Specifically, the Agreement does not offset the weight of the following factors: similarity of the marks, similarity of the goods, and similarity of trade channels of the goods.

A. THE MARKS ARE VIRTUALLY IDENTICAL

In a likelihood of confusion determination, the marks are compared for similarities in their appearance, sound, connotation, and commercial impression. *In re E. I. du Pont,* 177 USPQ at 567; TMEP §1207.01(b). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Davia,* 110 USPQ2d 1810, 1812 (TTAB 2014).

The marks at issue are virtually identical in appearance because they contain the nearly identical terms, E SPEED and ESPEED. The only distinctions between these marks are the presence of a space between the terms E and SPEED and minor stylization of the applied-for mark.

That the applicant's mark includes minor stylization does not dispel a likelihood of confusion between the parties' marks, because a mark in standard characters—such as the registrant's—may be displayed in any lettering style. The rights reside in the wording or other literal element and not in any particular display or rendition. *See In re Viterra Inc.*, 671 F.3d 1358, 1363, 101 USPQ2d 1905, 1909 (Fed. Cir. 2012); TMEP \$1207.01(c)(iii). Thus, the registrant's mark could be presented in the same manner of display as the applicant's stylized mark. *See, e.g., In re Viterra Inc.*, 101 USPQ2d at 1909.

In any case, the word portion of a composite mark may be more likely to be impressed upon a purchaser's memory because it is what is used by consumers when requesting the goods. *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999); TMEP §1207.01(c)(ii). The word portion is therefore often considered the dominant feature and is accorded greater weight in determining whether marks are confusingly similar. *In re Viterra Inc.*, 101 USPQ2d at 1911. Here, the marks will be used on automotive, land vehicle, and motor vehicle parts, often called for by name rather than seen, with no opportunity for any actual labelling differences to assure consumers they have obtained what they asked for

In sound, the parties' marks E SPEED and ESPEED are phonetic equivalents. Similarity in sound alone may be sufficient to support a finding that the marks are confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); TMEP §1207.01(b)(iv). There is no indication that the meaning of the marks is any different. When applied to vehicle parts, both marks suggest the same quality frequently desired in vehicles: speed.

That the marks are virtually identical is a *du Pont* factor that weighs heavily in favor of a finding of a likelihood of confusion.

B. THE GOODS ARE EITHER IDENTICAL OR HIGHLY RELATED

In this case, the parties' goods are identical in part, highly related, overlap or are otherwise complementary.

The applicant's goods, as amended on December 02, 2014, are:

Class 07: Fans and cylinders for motors for two-wheeled vehicles; silencers for motors and engines for two-wheeled vehicles; exhausts, cylinder heads for engines for two-wheeled vehicles; ignition devices for two-wheeled vehicles in the nature of ignition covers (emphasis added).

Class 12: Electric motor powered two-wheeled vehicles and <u>electrically powered two-wheeled vehicles and parts and accessories</u> therefor, namely motors, tires, wheels, wheel rims, brake linings, brake discs, aero-dynamic fairings, luggage carriers for motorcycles; cases for luggage adapted for use with motorcycles, transport cases adapted for use with motorcycles, saddlebags adapted for use with bicycles and motorcycles, tank bags adapted for use with motorcycles, stands, mudguards, spoilers, after body, rearview mirrors, fuel tank caps, fuel tanks, bicycle chains, motorcycle seats (emphasis added).

The relevant goods offered by the registrant are:

Class 07: Machine parts, namely, cam shafts, cam shaft parts in the nature of cam covers for vehicles and cam shaft modules made therefrom in the nature of cam covers for vehicles, variable camshaft adjustment parts in the nature of cam covers for vehicles, connecting rods, in particular from steel or ceramics, one-piece and composite connecting rods, crank shafts for use in connection with motor vehicles, composite and assembled crankshafts for use in connection with motor vehicles, pistons for use in connection with motor vehicles, compressors, namely, electronic compressors, and components for variable compression, namely, cam shafts, engines not for motor vehicles, and engine parts, namely, cam shafts, pumps, namely, pumps as parts of machines, and hybrid drives, namely, variable speed drives for machines, joints and shock absorbers, namely, shock absorbers for machines; transmissions for machines, air-conditioning compressors (emphasis added).

Class 12: Automotive parts, in particular pumps, namely, air pumps, hybrid drives, namely, engines for land vehicles, engine parts, namely, engine parts for land vehicles, and units for the drive train made therefrom, namely, wheel hubs, wheel bearings, wheel bearing units, namely, wheel bearings, and parts thereof, namely, drive shafts and gear wheels and units assembled thereof, namely, gear wheel units, speed-increasing gears, namely, gear wheels, speed-reducing gears, namely, gear wheels, shifting claws, namely, gear shifts, differential gears, namely, gear wheels, lightweight gears, namely, gear wheels, low-cost gears, namely, gear wheels; connecting rods for land vehicles, except for engine parts, in particular from steel and ceramics, in particular one-piece and composite connecting rods; engines for automobiles, in particular lightweight internal combustion engines; units for drive train of automobiles, namely, wheel hubs, wheel bearings, wheel bearings units, namely, wheel bearings, constant velocity and length adjustment units, namely, wheel bearings; longitudinal shafts, namely, drive shafts; side shafts, namely, drive shafts, namely, drive shafts, namely, drive shafts, namely, drive shafts for land vehicles, side shafts, namely, drive shafts for land vehicles, and gear wheels and units assembled thereof, namely, gear wheels, speed-increasing gears, namely, gear wheels, and speed-reducing gears, namely, gear wheels, synchromesh transmissions, shifting claws, namely, gear wheels, transmissions for electric drives (emphasis added).

1. Parties' Goods Are Identical To Or Otherwise Overlap

A number of the vehicle parts offered by the applicant under its E SPEED mark are legally identical to those the registrant offers under its ESPEED mark because the scope of the registration broadly covers parts for "automotive" vehicles, "land vehicles" and "motor vehicles," which categories encompass "two-wheeled vehicles."

The term "automotive" relates to or concerns "self-propelled vehicles or machines." *See* attached dictionary evidence from Merriam-Webster dictionary definition at http://www.merriam-webster.com/dictionary/automotive. Applicant manufactures parts for two-wheeled machines, motorcycles in particular. *See* attached evidence from applicant's website, http://company.ktm.com/gb/company/company-profile.html (accessed March 21, 2016). A motorcycle by definition is "an automotive vehicle with two in-line wheels." *See* attached dictionary evidence from Merriam-Webster dictionary, http://www.merriam-webster.com/dictionary/motorcycle.

Moreover, motorcycles are powered by motors, and are considered motor vehicles for that reason. *See* attached dictionary definition from Merriam-Webster indicating that the phrase "motor vehicle" refers to "a vehicle (such as a car, truck, or motorcycle) that is powered by a motor." http://www.merriam-webster.com/dictionary/motor%20vehicle. Finally, motorcycles are considered "land vehicles" because they are used for travel on land.

In this case, the registration broadly covers "a utomotive parts, in particular ... hybrid drives, namely, engines for landvehicles, engine parts, namely, engine parts for land vehicles" in Class 12. Registrant also offers engine parts in Class 7, including "crank shafts for use in connection with motor vehicles, composite and assembled crankshafts for use in connection with motor vehicles, pistons for use in connection with motor vehicles." The application, as amended, identifies "electrically powered two-wheeled [vehicle] parts ..., namely motors" (i.e., engines, as shown by the attached evidence from www.Merriam-Webster.com), as well as other engine parts in Class 07, including "fans and cylinders for motors for two-wheeled vehicles; silencers for motors and engines for two-wheeled vehicles [and] exhausts, cylinder heads for engines for two-wheeled vehicles."

To the extent that these goods are not identical on their face or legally equivalent, as with "motors" and "engines", the wording in the application and registration is broad enough such that goods in one encompass goods in the other. *See In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992) (unrestricted and broad identifications are presumed to encompass all goods of the type described). For example, registrant's "engine parts for land vehicles" encompass applicant's "fans and cylinders," "cylinder heads," and "silencers." Conversely, applicant's wheels encompass registrant's "gear wheels."

That the Applicant's goods are limited to two-wheeled vehicles, such as motorcycles, does not remove them from the scope of goods covered by the registration. The registration does not restrict all of the goods it covers to four-wheeled vehicles. And Section 7(b) of the Trademark Act, 15 U.S.C. § 1057(b), gives the registrant the right to use the mark for the goods as they are identified in the registration. *In re Dixie Restaurants*,

Inc., 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997). Because the applicant goods are "motor-powered two-wheeled vehicles" or parts therefor, the identifications of goods indicate that both parties manufacture identical or nearly identical goods for the same or similar vehicles.

With respect to applicant's and registrant's goods, the question of likelihood of confusion is determined based on the description of the goods stated in the application and registration at issue, not on extrinsic evidence of actual use. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1323, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014). Absent restrictions in an application and/or registration, the identified goods are "presumed to travel in the same channels of trade to the same class of purchasers." *In re Viterra Inc.*, 101 USPQ2d at 1908 (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002)).

In this case, a number of identifications set forth in the application and registration have no restrictions as to nature, type, channels of trade, or classes of purchasers. Therefore, it is presumed that these goods travel in all normal channels of trade, and are available to the same class of purchasers.

2. Parties' Goods Are Complementary, Competitive Or Otherwise Highly Related

To the extent the parties' goods are not identical or encompass each other, they are highly related and/or complementary. For example, applicant's "fans and cylinders," "silencers," "exhausts [and] cylinder heads" are identified as being "for motors [and/or] engines". Nothing in the record (or the Consent Agreement, for that matter) indicates that these parts could not be used with the "engines for land vehicles" registrant offers under its ESPEED mark. Indeed, they are all "engine parts for land vehicles" that the registration covers. Consumers shopping for "silencers ... for enginesfor two-wheeled vehicles" under the E SPEED mark, for example, are likely to be confused as the source of these products given that the registrant also makes various "engine parts for land vehicles" under its ESPEED mark.

Where evidence shows that the goods at issue have complementary uses, and thus are often used together or otherwise purchased by the same purchasers for the same or related purposes, such goods have generally been found to be sufficiently related such that confusion would be likely if they are marketed under the same or similar marks. *See In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1567, 223 USPQ 1289, 1290 (Fed. Cir. 1984) (holding bread and cheese to be related because they are often used in combination and noting that "[s]uch complementary use has long been recognized as a relevant consideration in determining a likelihood of confusion"). In this case, the applicant's identification of goods indicates that its goods are intended to be used with goods like those of the registrant.

To the extent the parties' goods are not identical or complementary, they are competitive. Commuters, particularly solo travelers, frequently choose two-wheeled vehicles, including scooters, over four-wheeled vehicles, like cars, to save time and money. *See* attached evidence from Lexis-Nexis and third party media. That manufacturers of two-wheeled vehicles and four-wheeled vehicles compete suggests that consumers in the market for a vehicle could very well encounter these types of goods, and parts therefor, under similar commercial circumstances. The use of practically identical marks on competitive goods is likely to confuse consumers as to the source of the goods sold or mistakenly assume a connection between the parties.

In any case, the goods of the parties need not be identical or directly competitive to find a likelihood of confusion. *See Safety-Kleen Corp. v. Dresser Indus.*, *Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01(a)(i). Rather, they need only be related in some manner, or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods come from a common source. *In re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999); TMEP §1207.01(a)(i).

The following evidence of record demonstrates that the goods are related and are commonly offered by the same parties under the same marks to the same consumers and through the same trade channels:

a) Third Party Registrations

Evidence shows that it is common for manufacturers to make these types of vehicle parts under the same trademark. For example, the October 9, 2015 Office Action includes the following third party registrations:

- · U.S. Registration No. 4667771 for HONDA (*pp. 101-102*) for "motor vehicles, namely, automobiles, sports utility vehicles, trucks, motorcycles, all-terrain vehicles, and scooters"
- · U.S. Registration No. 3392300 for VESRAH (pp. 82-84) for "components and accessories of automobiles, namely, clutches; components and accessories of two-wheeled vehicles and motor scooters, namely, clutches and brakes; ...mechanical elements for land vehicles, namely, shock absorbers, brakes and transmissions"
- · U.S. Registration No. 4494375 for KENTECH (pp. 85-87) for "automobiles; automotive structural parts, namely, self-sealing tanks for fuel storage, coolant storage, and/or water storage; cars; electric cars; motor cycles; motorcycles; shock absorbers for automobiles; sports utility vehicles; vehicle hoods; wheel hubs"

- U.S. Registration No. 4752996 for YAMALUBE (pp. 88-90) for "motorcycles ...pngines and motors for motorcycles ...pngines and motors for land vehicles"
- · U.S. Registration No. 4823322 for PHYRON (pp. 91-93) for "casings for pneumatic tires; inner tubes; pneumatic tyres and inner tubes for motorcycles; tires; tires for vehicle wheels; ...transmission belts for land vehicles; treads for retreading tyres; tyres for vehicle wheels"
- · U.S. Registration No. 4770233 for GSX-S (pp. 94-95) for "automobiles, motorcycles, all terrain vehicles, and structural parts thereof"
- · U.S. Registration No. 4819372 for a design mark (pp. 99-100) for "electric motorcycles; motors for land vehicles; structural parts for motorcycles"

b) Other Parties' Practices

Evidence also shows that well-known third parties, like Honda, BMW, Suzuki, and Mercedes, all manufacture motorcycles, cars, and parts for both types of land vehicles, under the same marks, and market them through the same trade channels. 10/9/2015 Office Action, pp. 2-3, 19-29, 44, 49-69, 7-18, 32-36, 37-43. See also additional attached evidence from select manufacturers' websites. This evidence shows that vehicle parts like those of the applicant and registrant are commonly offered under the same mark and through the same trade channels.

Moreover, various parts manufacturers and resellers, including Remus, make and sell car and motorcycle parts. 10/9/2015 Office Action, pp. 70-72. Also, the attached evidence from third party websites, including http://www.421powersports.com/, shows that two- and four-wheeled vehicles and parts therefor are frequently sold through the same trade channels.

c) Applicant's Own Practices

Applicant itself sells land vehicles besides motorcycles, including cars, and parts therefor. See evidence consisting of the Applicant's website, supported by third party websites. 10/9/2015 Office Action, pp. 120-133. This evidence, as well as that from the Final Office Action issued December 15, 2014, consisting of web page printouts from third party websites, also indicates that applicant sells engines and various other vehicle parts for its vehicles under the same mark. 12/15/2014 Office Action, pp. 2-6. So Applicant's parts are marketed under the same name and through the same channels. And these parts may very well be identical or similar to the registrant's engines and other vehicle parts, and could be used for identical or similar vehicles. The applicant does not refute this evidence. Applicant's Brief at 4-6.

In toto, the identity of the goods and the trade channels therefor are also factors that weigh heavily in favor of a finding of likelihood of confusion.

C. CONSENT AGREEMENT DOES NOT SERVE TO AVOID CONFUSION

In this case, the submitted Consent Agreement is a "naked consent" and is insufficient to overcome a likelihood of confusion refusal because it neither:

- (1) sets forth reasons why the parties believe there is no likelihood of confusion, nor
- (2) sufficiently describes the arrangements undertaken by the parties to avoid confusing the public. *See In re Mastic*, 829 F.2d 1114, 1117-18, 4 USPQ2d 1292, 1295-96 (Fed. Cir. 1987); TMEP §1207.01(d)(viii).

Without additional factors to support the conclusion that confusion is unlikely, naked consents are generally accorded little weight in a likelihood of confusion determination. See In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 1362, 177 USPQ 563, 568 (C.C.P.A. 1973) (noting that "[i]n considering agreements, a naked 'consent' may carry little weight," but "[t]he weight to be given more detailed agreements . . . should be substantial"); see also In re Donnay Int'l, S.A., 31 USPQ2d 1953, 1956 (TTAB 1994) ("[T]he more information that is in the consent agreement as to why the parties believe confusion to be unlikely, and the more evidentiary support for such conclusions in the facts of record or in the way of undertakings by the parties, the more we can assume that the consent is based on a reasoned assessment of the marketplace, and consequently the more weight the consent will be accorded.").

Factors to be considered in weighing a consent agreement include the following:

- (1) Whether the consent shows an agreement between both parties;
- (2) Whether the agreement includes a clear indication that the goods and/or services travel in separate trade channels;
- (3) Whether the parties agree to restrict their fields of use;
- (4) Whether the parties will make efforts to prevent confusion, and cooperate and take steps to avoid any confusion that may arise in the

future; and

(5) Whether the marks have been used for a period of time without evidence of actual confusion.

See In re Four Seasons Hotels Ltd., 987 F.2d 1565, 1569, 26 USPQ2d 1071, 1073 (Fed. Cir. 1993).

In this case, the Agreement sets forth two things. One is that the registrant has now consented to the registration of the applied-for mark E SPEED for goods as amended by the applicant on May 29, 2014, in response to the Initial Office action. Agreement at 1-2. The goods were amended at that time to specify that they are for two-wheeled vehicles.

Notably, the Agreement does not limit the registrant's identification of its goods. As stated above, the scope of the registration, as is, covers the goods identified in the application. The registration broadly covers "automotive parts," parts for "land vehicles" and parts for "motor vehicles" which covers parts for "two-wheeled vehicles." So the goods are identical or substantially identical in part. Therefore, the limitation of applicant's goods to parts for "two-wheeled vehicles" in no way prevents the registrant from selling parts for two-wheeled vehicles under its E-SPEED mark, including, for example:

- · cam shafts for "two-wheeled vehicles"
- · crank shafts for use in connection with "two-wheeled vehicles"
- · pistons for use in connection with "two-wheeled vehicles"
- · engine parts, namely, cam shafts, pumps, namely, pumps as parts of machines, and hybrid drives, namely, variable speed drives for "two-wheeled vehicles"
- · transmissions for "two-wheeled vehicles"
- · hybrid drives, namely, engines for "two-wheeled vehicles"
- · engine parts, namely, engine parts for "two-wheeled vehicles"

Under the Agreement, the parties thus apparently remain free to use virtually identical marks on legally identical goods nationwide. See *In re Bay State Brewing Company, Inc.*, Serial No. 85826258, 15-16 (finding consent agreement ineffective where parties stipulated one-sided geographical limitation that did not prevent an overlap between the parties' legally identical goods).

In addition to not requiring both parties to restrict their fields of use, or how they use the marks on the respective goods, the Agreement fails to indicate why the parties believe there is no likelihood of confusion under these circumstances. The Agreement also does not indicate that the goods will travel in separate channels of trade, or that the marks have been used for a period of time without evidence of actual confusion. Therefore, the Agreement sheds very little light on the market interface between the goods of the parties. *See In re Permagrain Prods., Inc.*, 223 USPQ 147 (TTAB 1984) (finding a consent agreement submitted by applicant did not alter the conclusion that confusion was likely, because the agreement was "naked" in that it merely indicated that each party would recognize, and refrain from interfering with, the other's use of their respective marks and that the applicant would not advertise or promote its mark without its company name, but the agreement did not restrict the markets or potential customers for their goods in such a way as to avoid confusion).

The sole other point to which the parties agreed is that if either becomes *aware* of any instances of actual confusion, that party will promptly notify the other of the circumstances of such confusion, and that both will then cooperate in taking any reasonable action to avoid any further confusion. Agreement at 2. This barebones reactive approach to resolving instances of confusion does not sufficiently describe the arrangements undertaken by the parties to avoid confusing the public. *See In re Mastic*, 829 F.2d 1114, 1117-18, 4 USPQ2d 1292, 1295-96 (Fed. Cir. 1987).

In short, the agreement between applicant and registrant "does not comprise the type of agreement that is properly designed to avoid confusion and does not fully contemplate all reasonable circumstances in which the marks may be used by consumers calling for the goods." *In re Bay State Brewing Company, Inc.*, Serial No. 85826258. It is therefore outweighed by the other relevant likelihood of confusion factors, namely that the marks are virtually identical, and the goods, trade channels and purchasers are presumably, at least in part, identical.

If applicant submits a more "clothed" consent agreement indicating the registrant's consent to the use and registration of the mark, and addressing one or both of the factors listed above, this refusal will be reconsidered.

QUESTIONS

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action. *See* 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. *See* TMEP §§705.02, 709.06.

RESUMPTION OF APPEAL

Upon issuance of this action, the Trademark Trial and Appeal Board will be notified to resume applicant's appeal.

/Valeriya Sherman/ Examining Attorney Law Office 121 (571) 270-7132 valeriya.sherman@uspto.gov

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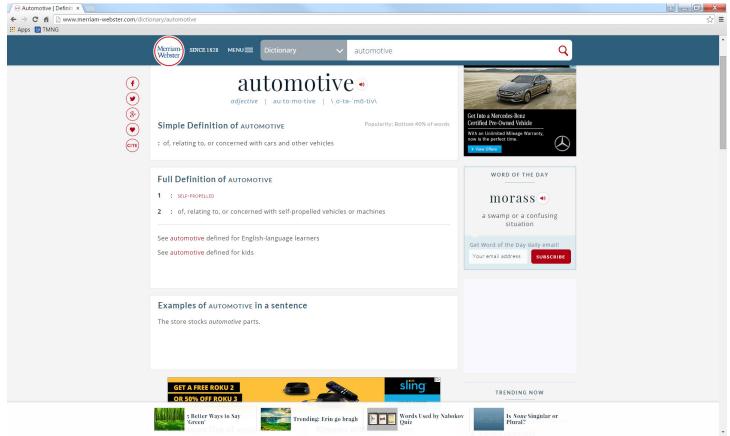
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WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

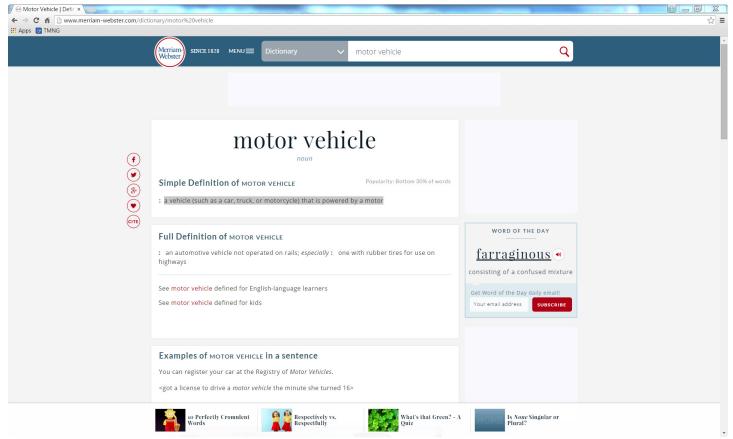
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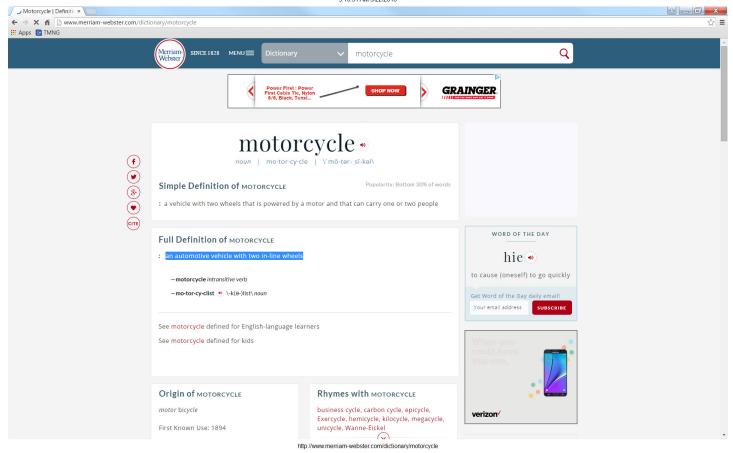
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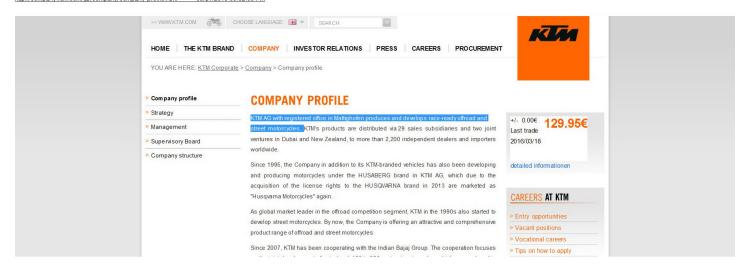


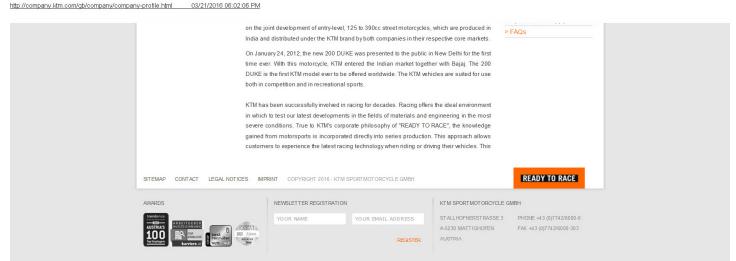
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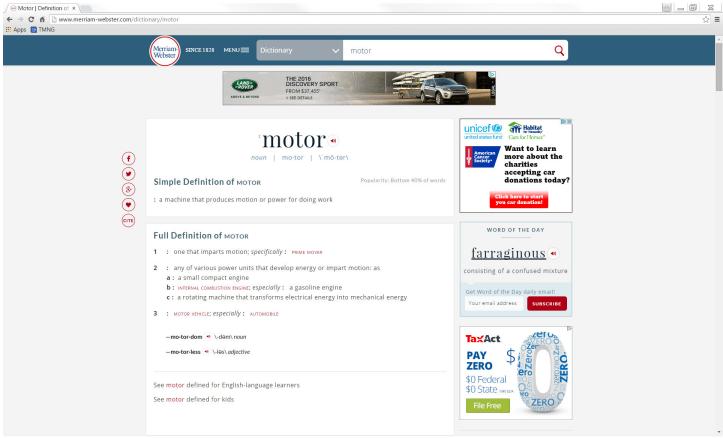
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5:15:25 PM 3/21/2016



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Electric scooters and motorcycles are quietly competing with electric cars for dominance in the green transportation future, and - according to analysts at the Pikes Research facility, the North American market will grow to more than 41,000 electric motorcycles and nearly 28,000 electric scooters by 2017.



- Western Europe: 109,945 e-motorcycles, 91,625 e-scooters
 Pacific Asia: 2.7 mil e-motorcycles, 13.5 mil e-scooters
- China: 2.2 mil e-motorcycles, 19.5 mil e-scooters

Growth like this would boost the overall electric 2-wheeler market from its present size (approx. 17 million units in 2011) to an estimated (again, by Pikes Research) 138 million units by 2017.

Senior analyst Dave Hurst writes that increasing population density will become a challenge for transportation systems and that e-motorcycles and scooters have a strong appeal to consumers and governments, alike. "They are relatively low cost to own," explains Hurst. "They do not take a lot of space, and are easy to maintain, therefore making them attractive for city dwellers. Governments also like these vehicles because they can utilize existing transportation and electricity infrastructure without the congestion problems and emissions impacts of conventional automobiles."

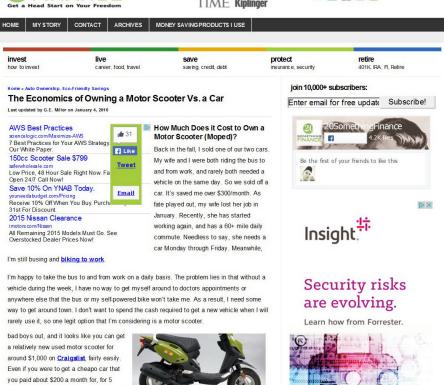












years, you're looking at a payoff of about 5 months for a motor scooter, in comparison.



What Costs are Involved with a Moped?

I'm sure insurance laws vary by state, but here in Michigan, you don't need insurance to operate one of these things. Of course, if you get in an accident, there probably won't be much left of you to pay for any damage or lawsuits. Additionally, a scooter license is cheap. Just \$5 per year (versus \$60 for a car).

How About Scooter Gas Mileage?

Depends on the scooter's engine size. But a 50cc engine will get you about 100 miles per gallon – about 5 times the average vehicle.

Total Coet Savings of a Monori Versus a Car? Insurance:

- Car: \$60/mo.
- Scooter: \$0

Gas:

- Car: \$60/mo.
- Scooter: \$20/mo.

Price:

- Car: \$333/mo, for three years
- Scooter. \$1,000 up front = 3 months of car payments, or one-twelve the price of the car.

After 3 months of ownership, you'd be paying \$453 to operate the car, and \$20/month to operate the scooter. Add in maintenance costs, car washes, and more, and you can see that I'm being very generous on the cost of owning the car.

Any Doumsides to Ouming a Secretar? Moped Discussion:

- Have you owned a scooter? What are you experiences?
- What is the recommended maintenance on a scooter?
- Any scooter buying advice?

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Boyan says: May 3, 2009 at 10:59 pm



I've had the same thoughts, but two things still bug me:

1) No way to carry much stuff — I can't imagine going to do a week's food shopping with a scooter.

2) You're exposed to the elements, and it rains quite a bit in Seattle

So fm still hoofing it around, rain jacked and grocery bags under my arms. But if someone has suggestions, I'd be glad to hear them.

Reply to this comment »

Liz says:

April 22, 2012 at 6:49 am



Seattle has one of the best bus systems around. I used to love having a bus pass and essentially owning them all 0 maintenance and you get a chauffeur May 31, 2014 at 3:31 pm



I know on a bicycle those things have had no impact on

My ability to note a bite year round. Groceres for the week in two rear sadde bags on a rack or large front Wald basket (the bags are w aterproof, do rain is not an issue, and like any proper RMV guy. I have rain pants and rain jacket). Weather and groceries are no big deal on a bicycle (i w aked and took thr bus only during heavy and rare snow), can't imagine it being much of one on a scooter either?

Reply to this comment »

djkenny says:

September 22, 2014 at 3:27 pm



Carrying groceries? I find it a piece of cake on my bicycle. I have a family of three, and I can carry \$75 w orth of Trader Joes on my rear rack Just buy two saddle bags. One of my bikes has a largish Widd baskel, I can carry \$55 of groceries easy on that to II can easily do this on a bicycle, I imagine it w outd not be hard on something like a scooler or motor cycle?

Rain should have almost no impact at all I fenders on my bicycles. Hive in FDX where it rains often as well. Wear some rain pants over normal cibithes, peal them off when I arrive at work or home, have a normal rain tacket or breathable bicycle one if I chose. Nope. no issues with either. Maybe heavy snow

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By: Matt Robison 🖾 🔠

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Choosing a scooter can have several advantages if your always on the go. If you are a student, or have a job that carries you away from home daily you know with the prices of automobiles today as well as gas prices constantly shooting up, many are looking for alternatives to driving their own cars.

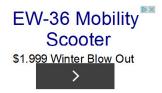
While taxis and buses are convenient they can also become quite costly. If you have to take a taxi everywhere it's definitely going to add up overtime. And as far as buses go you are subject to the whims of the bus schedule. Who wants to sit for 2 hours at a bus stopping waiting for a ride from to go home?

This is why scooters can be a great addition to any ones life. They are there when you need to go somewhere, not to mention they are much cheaper on gas. You could go much farther and longer on a tank of gas than you could with a car.

One the downside if you unfortunately do have an accident this means that you will have to pay out of pocket for any bodily images or damage to the scooter. Of course if you drive safely and are careful it will lessen your chances of actually being in an accident. I would suggest taking safety precautions just as you would when riding a motorcycle or four wheeler. Wear a a helmet and even knee pads or arm pads if you like.

Ultimately there are pros and cons to everything but if you are someone who's on a budget but still need to get around often then its definitely worth getting a scooter.

Just a quick summary of the pros for purchasing one. It not only saves you money on gas and thousands of dollars if you where to purchase a vehicle, but also you have no requirements for a special licenses, registration, or costly insurance. As you know now scooters are not only convenient and a huge money saver but they are also fun to drive. So how can you go wrong from purchasing a scooter?



Motorcycles

How to Increase your Motorcycle Gas Mileage Motorcycle Accessories For The Smart Rider
 Volts And Electric Scooters Go Hand In Hand



2 of 100 DOCUMENTS

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> March 23, 2009 Monday FINAL EDITION

SECTION: BUSINESS; Pg. 011

LENGTH: 300 words

HEADLINE: 2-wheelers put spark in electric genre;

PICKING UP SPEED

BODY:

When it comes to electric vehicles, the Tesla Roadster and Chevrolet Volt get all the love. But there are other EVs rolling around, and they're balancing on two wheels.

Since 2007, when Vectrix of Middletown, R.I., first rode onto the scene with its battery-powered Maxi Scooter, a growing number of U.S. start-ups have entered the plug-in two-wheeler market. They've invested millions of dollars in vehicles, many of which are poised for production within a year.

"It's amazing how inefficient the vehicles we're driving today really are," said Forrest North, founder and chief executive of Mission Motorsports, a San Francisco company that unveiled the prototype for its 150-mph, 150 mile-range electric motorcycle at the Technology, Entertainment, Design conference in Long Beach, Calif., last month.

Billed as "the world's fastest production electric sport bike," Mission's debut product is called the Mission One. Scheduled to ship in early 2010, its estimated retail price is \$68,000 - most of which is attributable to a large lithium-ion battery pack designed to compete with a gas-powered, performance-oriented sport bike.

Weighing less than 25 percent of a typical passenger car, two-wheeled scooters and motorcycles require fewer expensive batteries to bring them to speed. They are also simpler machines; they require fewer components and safety features, and they aren't subject to the same stringent governmental requirements as passenger cars.

That makes two wheels a less-complicated and less-expensive entry point than cars for electric drivetrain entrepreneurs, which is why electric two-wheelers also are coming on the market much faster, and more affordably, than their four-wheeled brethren. The majority of currently available production electric two-wheelers cost less than \$10,000.

GRAPHIC: 1. The Mission One motorcycle from San Francisco's Mission Motorsports is a 150-mph, 150 mile-range

Page 2 2-wheelers put spark in electric genre; PICKING UP SPEED The Star-Ledger (Newark, New Jersey) March 23, 2009 Monday

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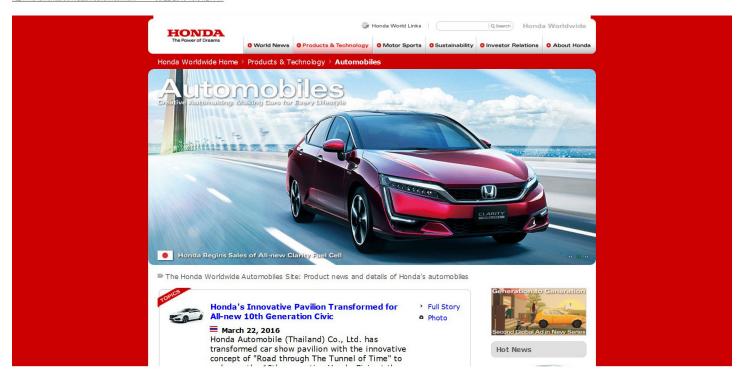
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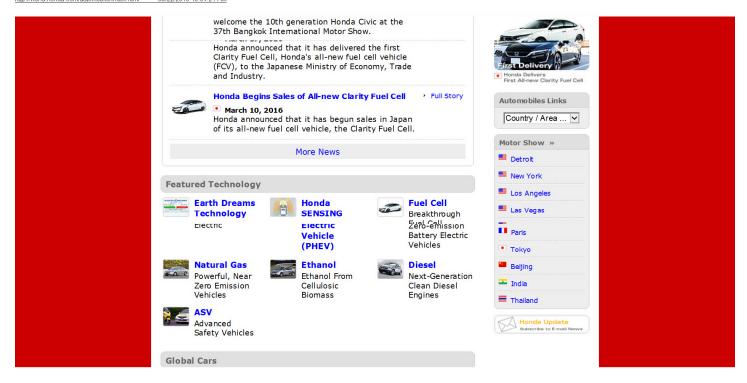
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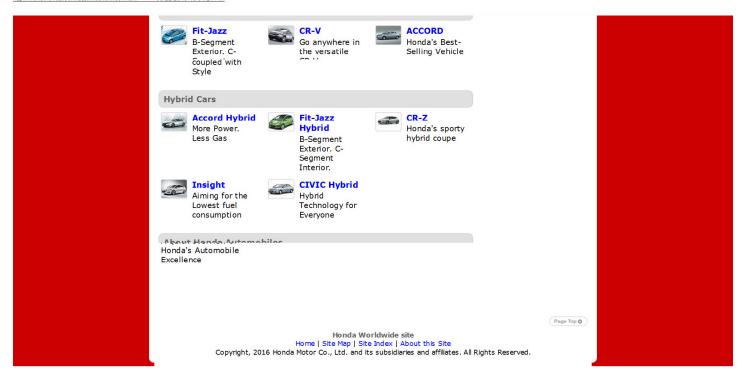
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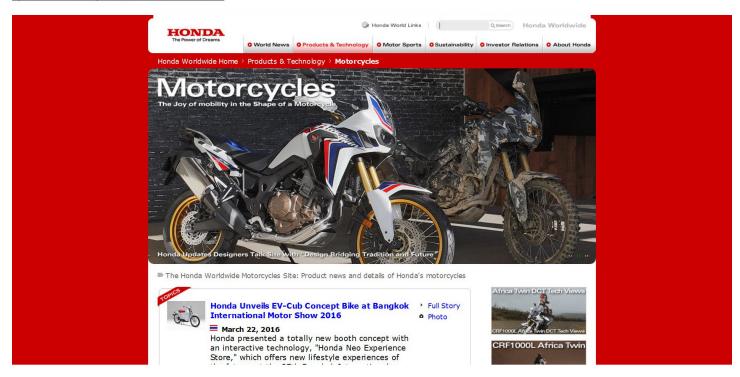
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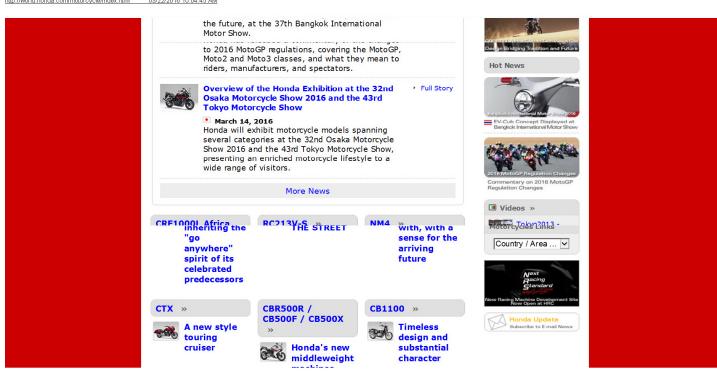
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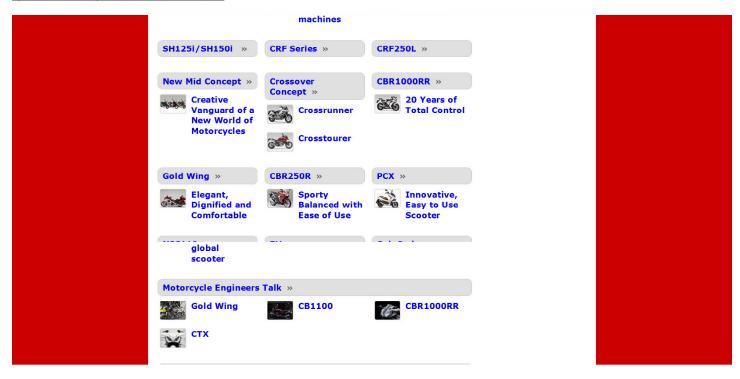


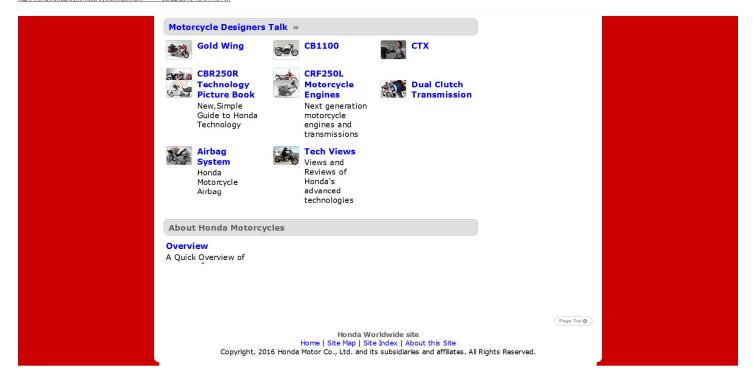








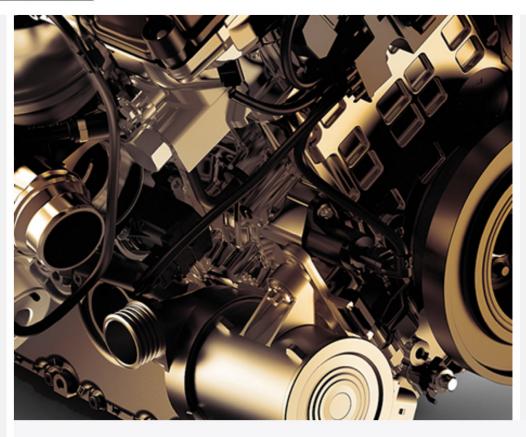




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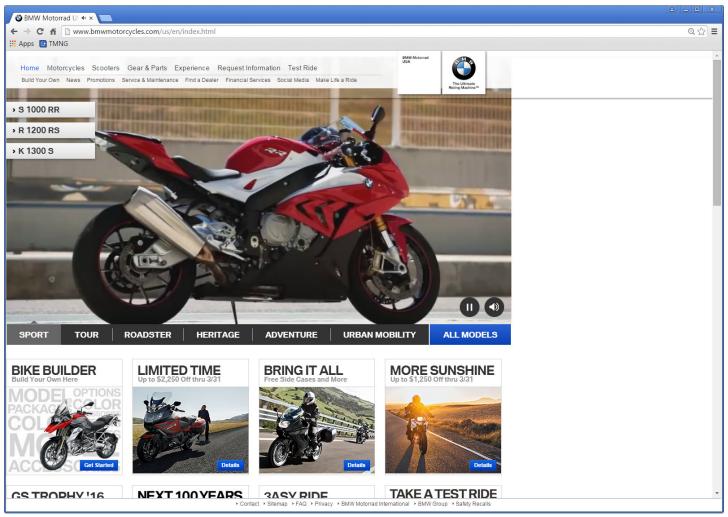


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Despite its compactness, there is an aggression to the 2 Series' lean, mean shape and low-and-wide stance. A sense of its power even when it lies still. In addition, like its ancestry, its low bettline gives it a compelling view of the road—going by very quickly.

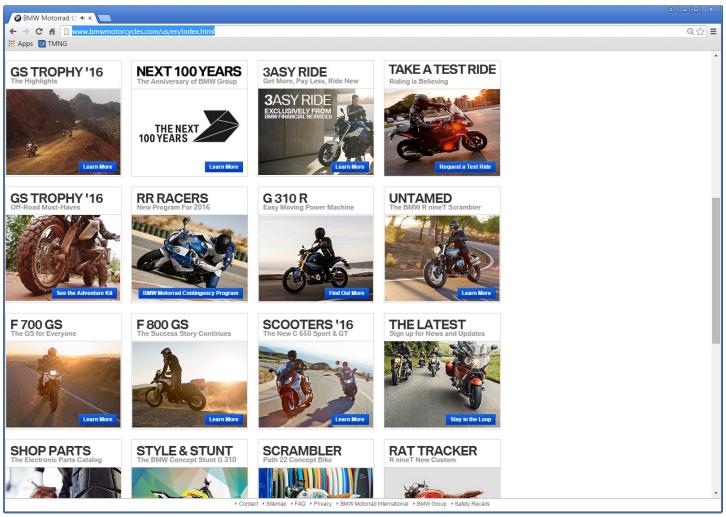


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Mercedes-AMG gets serious about bikes also

Motorrad | January 29th, 2016 by Mike DeAmicis 12

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MV Agusta, a small but legendary Italian motorcycle manufacturer and Mercedes-Benz's AMG division are reportedly taking their relationship to a new level.

Mercedes purchased a significant 25 percent stake of MV Agusta after its relationship with Ducati quickly collapsed. The cause of this collapse was Lamborghini's acquisition of Ducati. Automobili Lamborghini is, of course, a wholly owned subsidiary of Audi. Ever since, Mercedes has been seeking to increase their participation in the premium motorcycle segment, essentially trying to catch up to its rivals, Audi and BMW, whom are both well established in this segment.



Now, MV Agusta President, Giovanni Castiglioni, has shed light on how exactly the German brand and the Italian firm intend to solidify their bond. During a press event for the new Brutale 800, Castiglioni disclosed that 127 Mercedes dealerships across Europe will begin to display MV Agusta motorcycles. This is significant, as even BMW automobile dealers, unless they're BMW Motorrad dealers as well, do not display BMW motorcycles. Nor do Audi or Lamborghini dealers, typically, display Ducatis without also being a Ducati dealer. However, Mercedes has a lot of catching up to do.

Also, a version of MV Agusta's F3 800, which was unveiled at the Frankfurt Motor Show adorning "Solar Beam" paint derived from the Mercedes-AMG GT, will enter limited production. In addition to utilizing a color from AMG's color palette, the vehicle introduced in Sentember too, has the AMG brand name prominently placed on its fairings.

addition to utilizing a color from AMG's color palette, the vehicle introduced in September, too, has the AMG brand name prominently placed on its fairings.

Along with this, MV Agusta will introduce 6 new models, with the hope of making the brand more competitive. Though the MV brand is a prestigious brand, like Ducati and BMW Motorrad, it has significantly less brand recognition, particularly outside of those familiar with motorcycles. Increasing its association with Mercedes-Benz will begin to garner the brand more mainstream exposure whilst also serving to increase Mercedes' association with motorcycles. Whether MV Agusta will ever be able to truly compete commercially against Ducati and BMW

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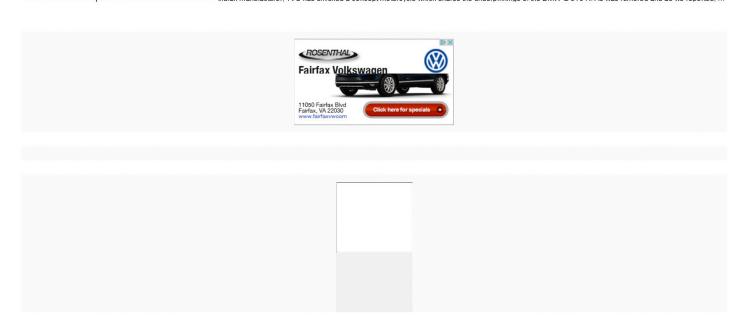
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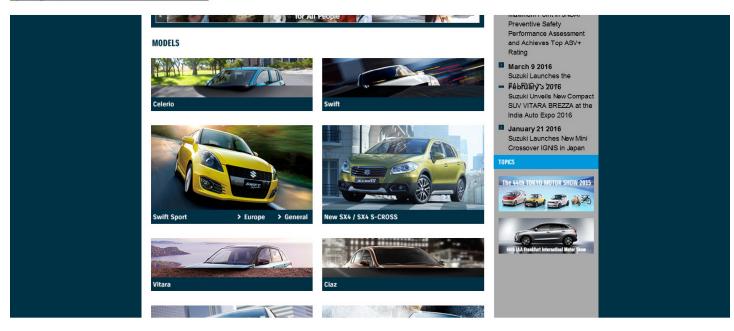
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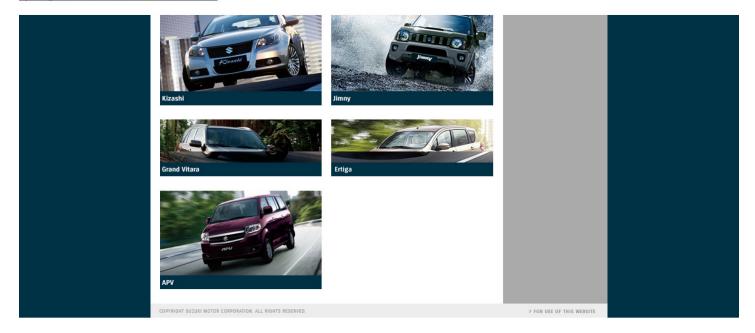
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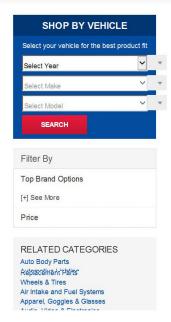




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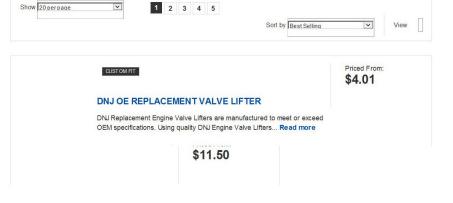


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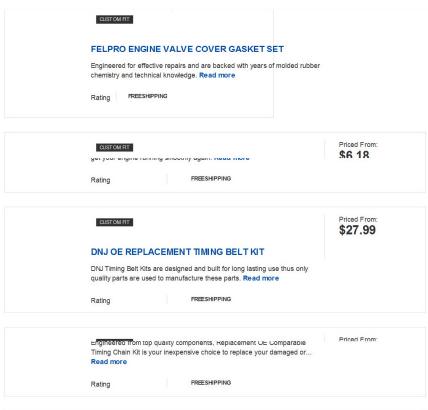


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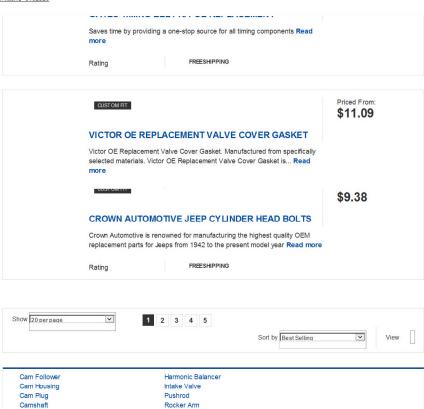
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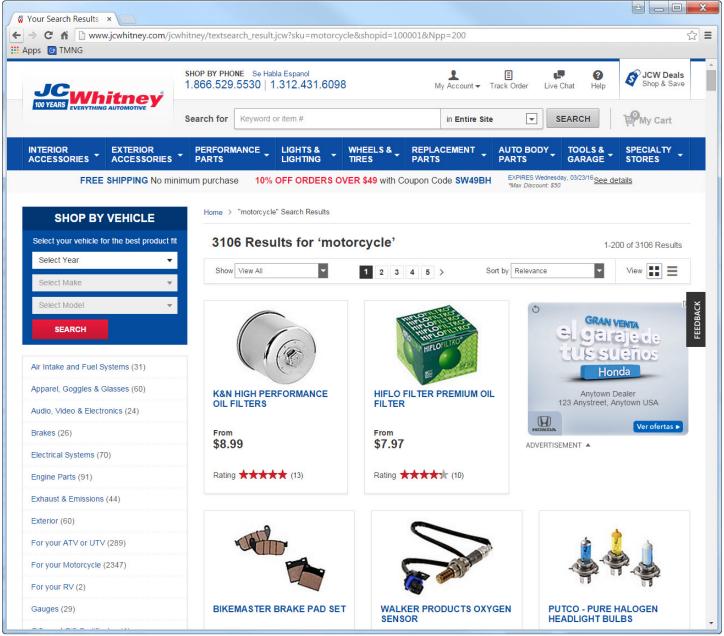
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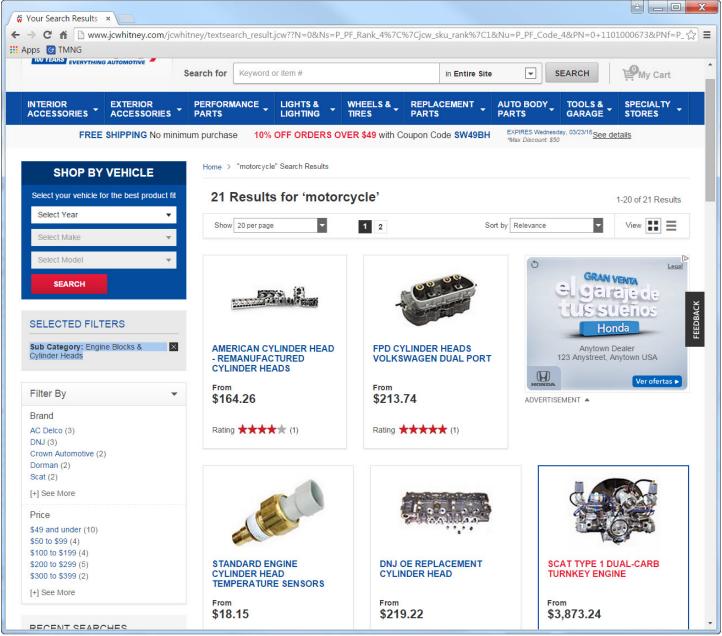
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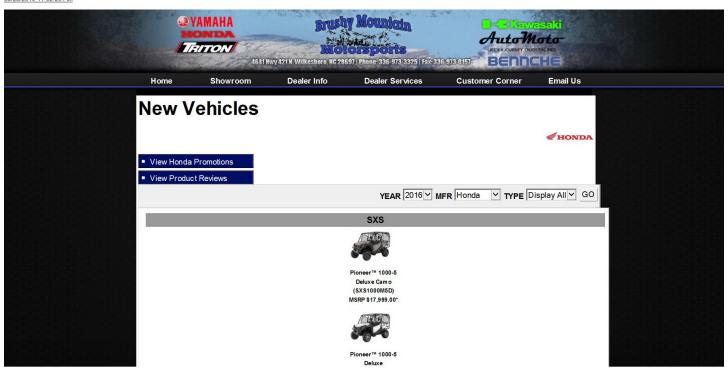


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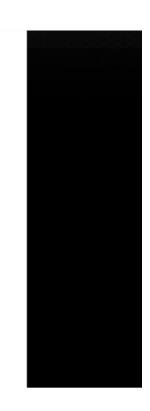
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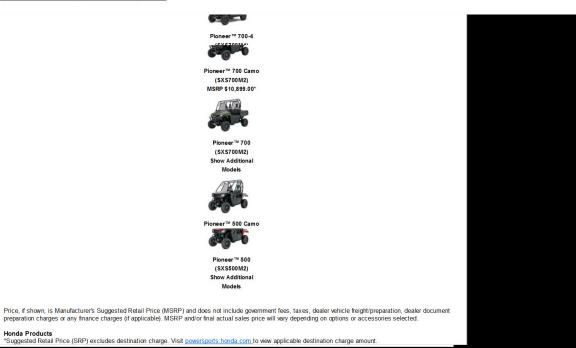




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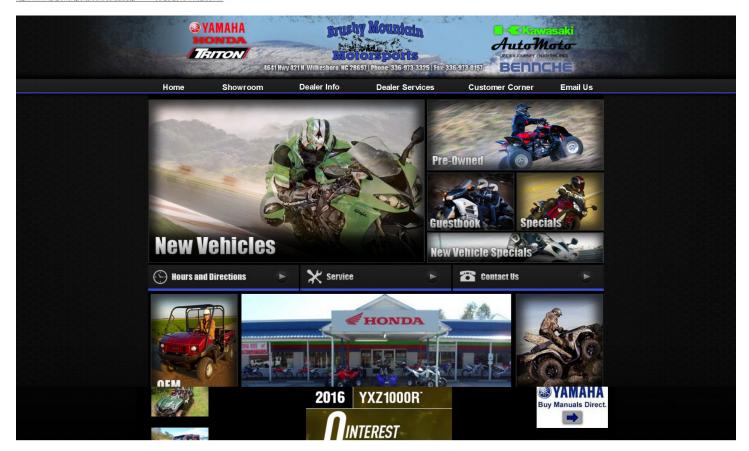


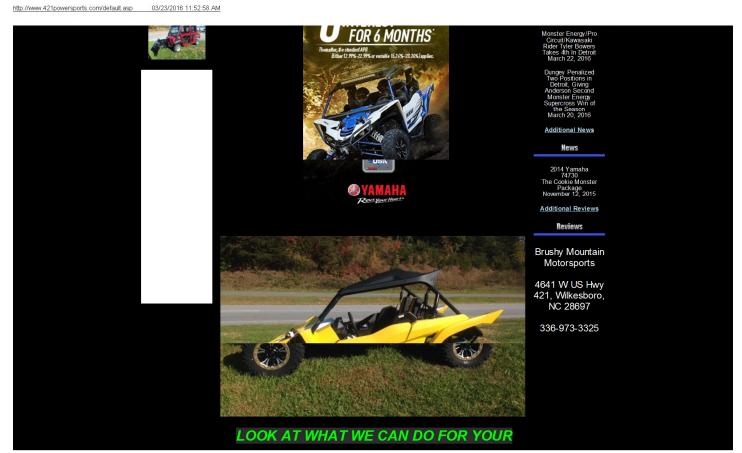




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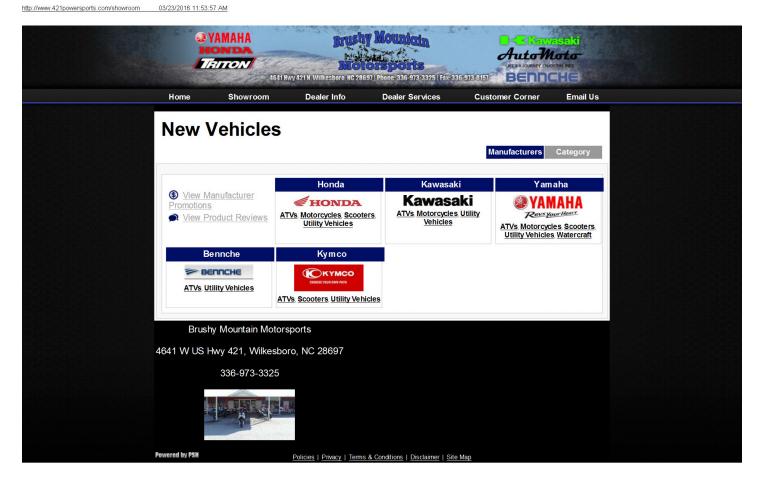
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(2) **RESPOND WITHIN 6 MONTHS** (*or sooner if specified in the Office action*), calculated from 3/30/2016, using the Trademark Electronic Application System (TEAS) response form located at http://www.uspto.gov/trademarks/teas/response_forms.jsp.

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(3) **QUESTIONS** about the contents of the Office action itself should be directed to the trademark examining attorney who reviewed your application, identified below.

/Valeriya Sherman/ Examining Attorney Law Office 121 (571) 270-7132 valeriya.sherman@uspto.gov

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Failure to file the required response by the applicable response deadline will result in the ABANDONMENT of your application. For more information regarding abandonment, see http://www.uspto.gov/trademarks/basics/abandon.jsp.

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